

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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DION DAWKINS,

Plaintiff,

v.

**ANSWER TO  
COUNTERCLAIMS**

Docket No: 1:24-cv-00043-LJV

R & D CONTRACTING, INC. and  
ROBERT J. BRICELAND,

Defendants.

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Plaintiff DION DAWKINS, by and through his attorneys, and GALLO & IACOVANGELO, LLP, for his Answer to Defendants R & D CONTRACTING, INC. and ROBERT J. BRICELAND's (hereinafter collectively "Defendants") Counterclaims, dated March 27, 2024, does hereby allege upon information and belief as follows:

**FIRST COUNTERCLAIM FOR BREACH OF CONTRACT**

1. Denies the allegations contained in paragraph "51".
2. Denies the allegations contained in paragraph "52".
3. Denies the allegations contained in paragraph "53".
4. Denies the allegations contained in paragraph "54".

**SECOND COUNTERCLAIM FOR UNJUST ENRICHMENT**

5. Denies the allegations contained in paragraph "56".
6. Denies the allegations contained in paragraph "57".

**THIRD COUNTERCLAIM FOR QUANTUM MERUIT**

7. Denies the allegations contained in paragraph "59".
8. Denies the allegations contained in paragraph "60".
9. Denies the allegations contained in paragraph "61".





10. Denies the allegations contained in paragraph "62".

11. Denies the allegations contained in paragraph "63".

**FOURTH CAUSE OF ACTION FOR ACCOUNT STATED**

12. Denies the allegations contained in paragraph "65".

13. Denies the allegations contained in paragraph "66".

14. Denies the allegations contained in paragraph "67".

15. Denies the allegations contained in paragraph "68".

**ALL OTHER POTENTIAL COUNTERCLAIMS**

16. Denies each and every other allegation which is not otherwise specifically admitted, controverted, or denied herein, which could be considered a counterclaim or any part thereof.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

17. Defendants have failed to state a cause of action upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

18. Defendants' claims are barred by equitable doctrines, such as, but not limited to, ratification, waiver, estoppel, unclean hands, and unjust enrichment.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

19. Defendants' claims are barred, in whole or in part, due to their material breach(es) of the agreement at issue.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

20. Defendants' claims are barred, in whole or in part, because they are duplicative.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

21. Defendants' claims are barred, in whole or in part, due to a failure and/or lack of consideration.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

22. Defendants' claims are barred, in whole or in part, by the statute of frauds.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

23. Defendants have suffered no actual injury and/or failed to mitigate their alleged damages, if any.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

24. The allegations contained in Defendants' claims fail to state a cause of action and the lawsuit is frivolous, therefore Plaintiff is entitled to attorneys' fees, costs and disbursements expended in the defense of Defendants' claims.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

25. If any damages were sustained as alleged in the Answer with Counterclaims, all such damages have been caused, in whole or in part, by the repudiation and failure to perform, wrongdoing, negligence, want of care, omissions, failure to mitigate damages or other culpable conduct or comparative negligence of Defendants or their agents or employees or other parties not named herein, without any contribution thereto by the replying Plaintiffs.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

26. Defendants' claims are barred and/or reduced, in whole or in part, due to their failure to comply with the requirements of General Business Law Section 771.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

27. There is no basis for an award of attorneys' fees against Plaintiff.





**AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE,  
REPLYING PLAINTIFF ALLEGES AS FOLLOWS:**

28. Plaintiff reserves his rights to assert any additional defenses as may become available through investigation and discovery and to adopt and assert any defenses raised or asserted by any other party to this action, if applicable, and hereby adopts and asserts all of the defenses raised or asserted by the other parties herein, if any, as if they were set forth fully herein, if any.

WHEREFORE, Plaintiff respectfully demands Judgment against Defendants:

- A. Dismissing the Defendants' Counterclaims in full and with prejudice;
- B. Against Defendants for the costs and disbursements and, if applicable, attorneys' fees, for the defense of the Counterclaims; and
- C. For such other and further relief as this Court may deem just, proper, and equitable.

**PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY**

Dated: April 1, 2024  
Rochester, New York

GALLO & IACOVANGELO, LLP

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